CF0000057509

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR.

CRIMINAL APPEAL NO. 235 OF 1990.

Appellant (In Jail) :- Saitram alias Nanki, son of Ranjit, aged about 26 years, resident of village Limgaon, P.S. Saraipali, Tahsil Saraipali, Distt. Raipur.

- V e r s u s -

Respondent :- The State Of Madhya Pradesh.

Single Bench (Criminal)

CRIMINAL APPEAL UNDER SECTION 374 OF Cr.P.C. AGAINST THE JUDGMENT PASSEDBY SHRI K.L. KORI, FIRST ADDITIONAL SESSIONS JUDGE, TO THE SESSIONS JUDGE RAIPUR (CAMP MAHASAMUND) IN THE SESSIONS TRIAL NO. 114/87. dt 20-2-90

1545 22-2-90 AK Mishra

16

HIGH COURT OF CHHAGGISGAR AT BILASPUR

Cr. Appeal No. 235/1990

Saitram alias Nanki

Vs.

State of Madhya Pradesh (now State Chhattisgarh)

Post for Judgment : 27.04.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

27.04.2006

17

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.235/1990

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Saitram alias Nanki

Versus

State of Madhya Pradesh (now State of Chhattisgarh)

Shri Gouri Shankar Singh, Counsel for the appellant.

Shri Ashish Shukla, Government Advocate for the State.

JUDGMENT

(Delivered on this 27th day of April 2006)

This appeal is directed against the judgment dated 20th February 1990 delivered by Shri K.L.Kori, First Additional Sessions Judge, Raipur in Sessions Case No. 114/1987 whereby the appellant-Saitram was convicted under Section 326 I.P.C. and was sentenced to undergo R.I. for four years.

2. Briefly stated the prosecution case is that the agricultural fields of the appellant and Sunderlal are adjacent in village Limgaon. On 7.8.1986 at 7.00 A.M. Sunderlal P.W.1 with his son Rajaram P.W.2 went to the field. They noticed that the appellant-Saitram, co-accused Hridayram and Ranjit were scrapping their side of field ridge with a Shovel. Sunderlal P.W.2 stopped the appellant and two other co-accused from scrapping his field ridge. Upon this, the appellant Saitram assaulted Sunderlal on the forehead by the sharp edge of Shovel. Sunderlal bled profusely and fell unconscious. On seeing this, Rajaram P.W.1 objected whereupon the appellant assaulted

Rajaram P.W.1 on the head by the sharp side of Shovel. Another blow was inflicted on the left thigh of Rajaram. Vide Ex.P.1 F.I.R. was lodged by Rajaram promptly at 10.40 A.M. in P.S. Saraipali situated about 12 kilometers away from the place of occurrence. Both Rajaram and Sunderlal were examined by Dr. S.B.Mangrulkar P.W.11 who found a huge incised wound 6" x 3" x brain deep on forehead just above the left eye-brow. Brain matter was exposed. Sunderlal was unconscious and not responding to any stimuli. He was getting convulsions and was vomiting. Pupils were not reacting to light. It was opined that the injury was fresh and was caused by hard and sharp object and was dangerous to life. Sunderlal was referred immediately to D.K. Hospital, Raipur for X-ray and treatment of head injury with the advice of shifting him to Raipur as early as possible.

3. Dr. S.B.Mangrulkar found the following injuries on Rajaram:

i. An incised wound 5" x 2" x bone deep on the parietal occipital area of skull with bleeding and history of vomiting. Pupils were not reacting to light.

ii. There was severe pain in the abdomen particularly in the right hypochondria. Generalised rigidity was present.

iii. There was a linear abrasion 3 centimeters on left thigh and

iv. There was another abrasion on left knee.

It was opined that the injury No.1 was caused by hard and sharp object. Injuries No.3 & 4 could be caused by hard and blunt object. Rajaram was also referred to D.K. Hospital immediately for X-ray of skull and for treatment. Dr. S.C. Vishnoi P.W.9 took

X-ray of Rajaram and found fracture on the posterior parietal bone, vide report Ex.P.9. After completion of investigation, the appellant was prosecuted.

4. The appellant abjured the guilt, pleaded innocence and examined Chakravarthi D.W.1 and Mahesh D.W.2 in defence. The prosecution examined as many as 12 witnesses. The learned trial Judge, relying upon the evidence led by the prosecution, convicted and sentenced the appellant as aforesaid in paragraph-1.

5. Learned counsel for the appellant has contended that the evidence led by the prosecution did not prove the guilt of the appellant beyond reasonable doubt. The prosecution did not explain the injury sustained by the appellant. Dr. S.B.Mangrulkar P.W.11, on 7.8.1986, had found a lacerated wound 1 cm. x $\frac{1}{2}$" x $\frac{1}{2}$" on the left wrist and swelling present with bleeding on the appellant. It was argued that Rajaram and Sunderlal were aggressors and had assaulted the appellant. The injury, if any, found on Rajaram and Sunderlal was inflicted in self-defence. On the other hand, Shri Ashish Shukla, learned Government Advocate has argued in support of the impugned judgment.

6. Having considered the rival contentions, I have minutely perused the testimony of Rajaram P.W.1 and Sunderlal P.W.2 as also the medical evidence. Rajaram P.W.1 and Sunderlal P.W.2 have corroborated each other while deposing that when they objected to the scrapping of their field ridge by the appellant, he assaulted Sunderlal by the Shovel on the forehead. Thereafter, the appellant assaulted Rajaram by the Shovel on the head. In cross-examination, these witnesses denied the

suggestion put-forth by the defence that Sunderlal had chased the appellant and assaulted him by the Shovel. Sunderlal has deposed that on being assaulted by the Shovel on the forehead, he became unconscious. The testimony of above witnesses is fully corroborated by Dr. S.B.Mangrulkar P.W.11 and Dr. S.C.Vishnoi P.W.9. The nature of injuries found on Sunderlal and Rajaram as detailed in paragraphs 2 & 3 were proved by Dr. S.B.Mangrulkar. Dr. S.C.Vishnoi P.W.9 has also proved that Rajaram had sustained a fracture on the right posterior parietal bone. It was also suggested by the defence that the injury sustained by Rajaram and Sunderlal could have been caused by a fall on a sharp stone. However, during the cross-examination of Rajaram and Sunderlal, it did not emerge that Rajaram and Sunderlal had a fall on a sharp stone. Sub-Inspector G.R.Shende P.W.12 has also proved the first information report Ex.P.1 promptly lodged by Rajaram P.W.1 on 7.8.1986 which also fully corroborates his testimony and that of Sunderlal P.W.2. Seizure of one bloodstained iron shovel from the appellant-Saitram has also been proved by Sub-Inspector G.R.Shende P.W.12.

7. The report lodged by the appellant on 7.8.1986 at 10.50 A.M. in Police Station Saraipali was proved by Sub-Inspector G.R.Shende P.W.12. A perusal of report Ex.D.2 lodged by the appellant-Saitram shows that the appellant had prevented Rajaram and Sunderlal from pouring the sand on his side of the field ridge whereupon there was a quarrel. Sunderlal and Rajaram both were carrying Shovels and assaulted the appellant whereupon he held the Shovel and pushed both Sunderlal and Rajaram on the ground along with the Shovel and ran home. It is

pertinent to note that no such defence was specifically taken in cross-examination of Rajaram P.W.1 and Sunderlal P.W.2. The nature of injury found on the appellant-Saitram was a superficial injury. In this view of the matter, the defence of the exercise of right of private defence taken by the appellant becomes highly improbable. The nature of injury sustained by Rajaram and Sunderlal also clearly goes to show that the appellant had forcefully assaulted them with the sharp side of the Shovel due to which Rajaram had sustained a grievous injury.

8. From the foregoing discussion, it is established that the appellant-Saitram voluntarily caused grievous hurt to Rajaram P.W.1 by assaulting him with the sharp side of a Shovel which is a dangerous weapon. It is also established beyond doubt that the appellant had assaulted-Sunderlal also by the sharp side of the Shovel thereby causing simple injuries.

9. It is surprising to find that the trial Court did not award any sentence to the appellant for the simple injury sustained by Sunderlal due to an assault by a Shovel by the appellant which is an offence under Section 324 I.P.C. It is also surprising that only sentence of rigorous imprisonment for 4 years was awarded by the trial Court for the offence under Section 326 I.P.C. i.e. for the assault on Rajaram by a dangerous weapon i.e. Shovel thereby causing grievous injury. It is also surprising to find that no sentence of fine was awarded under Section 326 I.P.C. to the appellant which is mandatory. However, no appeal has been preferred by the State for enhancement of sentence.

11. To conclude, the conviction of the appellant under Section 326 I.P.C. and the sentence of R.I. for four years awarded

thereunder are well founded and do not call for any interference. The appeal being devoid of merit is dismissed.

12. The appellant-Saitram @ Nanki shall surrender before the Sessions Judge, Raipur on 2nd May, 2006 for undergoing sentence. His bail bonds stand cancelled. In case the appellant fails to surrender, the Sessions Judge shall issue a warrant of arrest against him and send him to jail to undergo the sentence. Compliance shall be reported to this Court before 31st May 2006 by the Sessions Judge, Raipur.

Sd/-
Dilip Raosaheb Deshmukh
Judge
27.04.2006